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No. 07-1529

IN THE

Supreme Court of the United States

JESSE JAY MONTEJO,
Petitioner,
v.
STATE OF LOUISIANA,
Respondent.

On Writ of Certiorari to the Louisiana Supreme Court

BRIEF OF *AMICI CURIAE* THE NATIONAL LEGAL AID & DEFENDER ASSOCIATION AND THE PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*

The National Legal Aid and Defender Association is the nation's oldest and largest nonprofit association of equal justice professionals. Its membership is comprised of approximately 3,000 offices that provide legal services to poor people, including the majority of public defender offices, coordinated assigned counsel systems, and legal services agencies around the nation. The Public Defender Service for the District of Columbia provides and promotes quality legal representation to indigent adults and children facing a loss of liberty in the District of Columbia.[1]

In *Patterson v. Illinois*, 487 U.S. 285 (1988), this Court observed that "[o]nce an accused has a lawyer, a distinct set of constitutional safeguards aimed at preserving the sanctity of the attorney-client relationship takes effect." *Id.* at 290 n.3. The question in this case is whether, as one might reasonably expect and as is currently the case in every state save Louisiana and Mississippi, indigent defendants have a lawyer immediately upon court-ordered appointment, or whether they must take another step to secure this right—specifically, whether they must interject post-court-appointment unprompted that they accept that which they have already been given. This issue is of obvious concern to *amici*; all of our clients are indigent and are beholden to the State to provide them with counsel, and, until now, we have

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[1] The parties have consented to the filing of this brief. Counsel of record for all parties received notice at least 10 days prior to the due date of *amici's* intention to file this brief. No counsel for any party authored any part of this brief, and no person or entity, other than *amici*, has made a monetary contribution to the preparation or submission of this brief.

understood court-ordered appointment to trigger our constitutional and ethical obligations to provide effective assistance to our clients.

Based on our knowledge of how the court-appointment system operates, how initial appearances are conducted, and the needs of our clients, *amici* believe the approach endorsed by the Louisiana Supreme Court would place illogical, unfair, and ultimately unworkable burdens on indigent defendants' right to Sixth Amendment protections. Accordingly, we urge the Court not to upset the equitable status quo that favors broad, presumptive court-appointed representation of indigent defendants and to reject Louisiana's post-court-ordered-appointment-unprompted-acceptance approach.

STATEMENT OF THE CASE

Amici adopt Petitioner's statement of the case.

SUMMARY OF ARGUMENT

The Louisiana Supreme Court's approach, requiring a defendant to interject unprompted his acceptance of court-ordered appointment of counsel, challenges the established principle and current practice of broadly and presumptively affording indigent defendants representation. In contrast to Louisiana's approach which impedes representation, this Court and the vast majority of jurisdictions encourage representation of indigent defendants, recognizing that representation by counsel is beneficial to indigent defendants and the criminal justice system as a whole, both in terms of fairness and efficiency. To that end, every state save Louisiana and Mississippi has court-appointment machinery that, although varying in detail, promotes representation of indigent defendants, and places the burden

on courts, not indigent defendants, to ensure that defendants are represented absent a valid waiver. Preserving this equitable status quo is reason alone for this Court to reject Louisiana's post-court-ordered-appointment-unprompted-acceptance approach.

But even if this Court were to decide that change is needed and that it is necessary to determine, outside the well-established context of waiver, whether a defendant desires court-appointed counsel, this Court should still reject Louisiana's approach because it fails to meaningfully elucidate whether an indigent defendant who has received court-appointed counsel actually wants a lawyer.

An indigent defendant, although desirous of representation by court-appointed counsel, is unlikely to interject unprompted that he accepts court-appointed counsel because it makes no sense to accept a self-effectuating court order; indigent defendants are unlikely to be aware of such a formalistic requirement; and indigent defendants may well be chilled from speaking out either by the chaotic atmosphere of initial appearances or by the court's instructions. Louisiana's approach is additionally unworkable because it would force judges in many cases to draw conclusions about a defendant's desire for counsel on the basis of incomplete and imprecise records. At initial appearances when counsel is appointed, the primary focus of already overburdened courts is processing crowded criminal dockets as efficiently as possible—leaving little opportunity for interaction with individual defendants, much less a separate colloquy addressing whether a defendant has "accepted" court-ordered appointed counsel—and these proceedings often are not transcribed or recorded.

In short, rather than ensuring that Sixth Amendment protections only extend to those indigent defendants who desire them, Louisiana's post-court-ordered-appointment-unprompted-acceptance approach specifically thwarts representation of indigent defendants by subjecting them to illogical, unfair, and ultimately unworkable demands. This Court should reject the approach of the Louisiana Supreme Court and reverse the decision below.

ARGUMENT

I. LOUISIANA'S APPROACH REQUIRING A DEFENDANT TO INTERJECT UNPROMPTED HIS ACCEPTANCE OF COURT-ORDERED APPOINTMENT OF COUNSEL IGNORES THE REALITY OF WHY AND HOW COURTS APPOINT COUNSEL TO INDIGENT DEFENDANTS.

A litany of this Court's decisions make clear that representation of indigent defendants is beneficial to defendants and the criminal justice system as a whole. Putting that principle into practice, the vast majority of states have set up court-appointment machinery that facilitates broad and presumptive representation of indigent defendants. Endorsement of the Louisiana Supreme Court's approach for determining when an indigent defendant may lay claim to Sixth Amendment protections[2]—which requires an

[2] In articulating this approach, the Supreme Court of Louisiana discussed the specific protection of the prophylactic rule of *Michigan v. Jackson*, 475 U.S. 625 (1986), but its reasoning cannot be limited to that context given its focus on the failure to interject acceptance of counsel generally, not the failure to accept counsel specifically as a medium between the defendant and the State in the course of interrogation. *Cf. id. at* 633 (presuming that a defendant who asks for court-appointed

indigent defendant to interject unprompted his acceptance of court-ordered appointment—would upset this equitable status quo and inject uncertainty and confusion into this area of the law. Accordingly, this Court should reject Louisiana's approach.

A. Our criminal justice system favors representation by counsel and facilitates representation of indigent defendants by court-appointment.

Louisiana's approach impedes representation by counsel both by requiring indigent defendants post-court-appointment to take an additional step of reassuring courts that they in fact want court-appointed counsel, and by interpreting a defendant's failure to interject "acceptance" of court-appointment as a rejection of the right to counsel. In contrast, recognizing the benefits of representation by counsel in terms of fairness and efficiency, our criminal justice system favors and facilitates representation of indigent defendants and prohibits waivers of the right to counsel by silence.

The reality in our adversarial system of criminal justice is that "lawyers . . . are necessities, not luxuries." *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963). We recognize that "[e]ven the intelligent and educated layman"—who may be ignorant of his rights, unfamiliar with procedural rules, and no match for the organized forces of the state seeking to prosecute and convict him—"requires the guiding hand of counsel at every step in the proceedings against him." *Powell v. Alabama*, 287 U.S. 45, 69 (1932); *see also United States v. Ash*, 413 U.S. 300,

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counsel requests an attorney for all purposes in connection with his criminal case).

307 (1973) ("The function of counsel as a guide through complex legal technicalities long has been recognized by this Court."); *Johnson v. Zerbst*, 304 U.S. 458, 465 (1938) ("The purpose of the constitutional guaranty of a right to counsel is to protect an accused from conviction resulting from his own ignorance of his legal and constitutional rights . . . .").

These concerns apply with equal if not greater force to indigent defendants. Indigent defendants make up the bulk of the nation's prison population and, as a group, are poorly educated and have high levels of "learning disabilities, and mental impairments." *Halbert v. Michigan*, 545 U.S. 605, 621 (2005) (citing Allen J. Beck & Laura M. Maruschak, U.S. Dept. of Justice, Bureau of Justice Statistics, *Mental Health Treatment in State Prisons, 2000*, 3-4 (2001), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/mhtsp00.pdf). They are thus "particularly handicapped as self-representatives." *Id*. at 620. Indeed, data from 2005 shows that "more than half of all prison and jail inmates had a mental health problem." Doris J. James & Lauren E. Glaze, U.S. Dept. of Justice, Bureau of Justice Statistics, *Mental Health Problems of Prison and Jail Inmates*, 1 (2006), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/mhppji.pdf. Indigent defendants, like state inmates, often also have low basic skill levels. For example, "[s]even out of ten inmates fall in the lowest two out of five levels of literacy-marked by an inability to do such basic tasks as . . . use a bus schedule . . . ." *Halbert*, 545 U.S. at 621 (quoting *Kowalski v. Tesmer*, 543 U.S. 125, 140 (2004) (Ginsburg, J., dissenting)) (modifications omitted).

It is precisely because the lay defendant is unfamiliar with, if not ignorant of, our rules and procedures that *pro se* representation is actively

discouraged. Self-representation is "inimical to well-functioning trials as well as hazardous to defendants' chances of success." *United States v. Hill*, 252 F.3d 919, 924-25 (7th Cir. 2001); *see also Martinez v. Court of Appeal of Cal., Fourth Appellate Dist.*, 528 U.S. 152, 161 (2000) ("No one . . . attempts to argue that as a rule *pro se* representation is wise, desirable, or efficient . . . . Our experience has taught us that a *pro se* defense is usually a bad defense . . . .") (citation and quotation marks omitted). Accordingly, a jurisprudence has grown "demanding more and more extensive advice and warnings to impress on the defendant the drawbacks of dispensing with counsel. This litany is a means of discouraging self-representation . . . ." *Hill*, 252 F.3d at 924 (citations omitted).

Trial courts have an obligation to appoint counsel when they deem the assistance of counsel "a necessary requisite of due process of law." *Powell*, 287 U.S. at 71; *see also Tomkins v. State of Missouri*, 323 U.S. 485, 487 (1945) (Under the *Powell* test, "a request for counsel is not necessary. One must be assigned to the accused if he is unable to employ one and is incapable adequately of making his defense.") (footnote omitted); *Johnson v. Zerbst*, 304 U.S. at 465 ("The constitutional right of an accused to be represented by counsel invokes, of itself, the protection of a trial court . . . ."). Moreover, trial courts cannot permit "an accused's ignorant failure to claim his rights" under the Sixth Amendment to result in the "remov[al of] the protection of the Constitution." *Johnson v. Zerbst*, 304 U.S. at 465.

Trial courts have the additional responsibility of ensuring that defendants only proceed *pro se* if they have waived their right to counsel "knowingly and intelligently," *Faretta v. California,* 422 U.S. 806, 835

(1975); *see also Johnson v. Zerbst*, 304 U.S. at 465 (prohibiting waiver based on an "ignorant failure to claim" Sixth Amendment protection), and "[p]resuming waiver from a silent record is impermissible." *Carnley v. Cochran*, 369 U.S. 506, 516 (1962). Instead, a trial court must ensure that the defendant is "aware of the dangers and disadvantages of self-representation" prior to accepting any waiver, *Faretta*, 422 U.S. at 835, and must "'indulge every reasonable presumption against waiver.'" *Michigan v. Jackson*, 475 U.S. 625, 633 (1986) (quoting *Johnson v. Zerbst*, 304 U.S. at 464); *see also Patterson*, 487 U.S. at 298 ("[R]ecognizing the enormous importance and role that an attorney plays at a criminal trial, we have imposed the most rigorous restrictions on the information that must be conveyed to a defendant, and the procedures that must be observed, before permitting him to waive his right to counsel at trial."). An approach that would allow a defendant to proceed without counsel at this stage of the proceedings on the basis of silence conflicts with these strict constraints on the waiver process and the principle that "representation by counsel . . . is the standard, not the exception." *Martinez*, 528 U.S. at 161.

B. The vast majority of states have court-appointment machinery that broadly and presumptively affords counsel to indigent defendants.

To ensure that representation is the standard, most states have established an appointment process which broadly and presumptively affords counsel to indigent defendants and places the onus on the courts, not indigent defendants, to ensure the de-

fendants are represented absent a valid waiver.[3] Indeed, in many jurisdictions, counsel is appointed simply upon some showing of indigency made in response to an inquiry by the court or its agents.

The process in the District of Columbia is illustrative. Before the initial appearance, eligibility examiners from the Court Services Office interview defendants to make a determination of indigency. All defendants are interviewed unless they indicate that they have already retained counsel. For each defendant, an eligibility examiner fills out a form detailing the defendant's financial status which the defendant then signs. The form seeks only financial information; it does not include any questions about the defendant's desire for court-appointed counsel. If the defendant is deemed financially eligible, an attorney from the Public Defender Service or a Criminal Justice Act panel attorney is appointed to represent the defendant.[4] The appointed attorney reviews the file and meets with the defendant prior to the initial appearance. Once in court, the defendant's case is called by the judge, the defendant states his name, and then the appointed attorney speaks on behalf of the defendant. This process occurs without any colloquy by the judge to determine whether or not the defendant has accepted appointment—acceptance is assumed.

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[3] Apart from Louisiana, Mississippi is the only other state that, also pursuant to a state Supreme Court decision, departs from this norm and requires a defendant to affirmatively accept appointment of counsel. *See Wilcher v. State*, 697 So. 2d 1087 (Miss. 1997).

[4] A Criminal Justice Act panel attorney is a private attorney "selected from panels of attorneys designated and approved by the courts." D.C. CODE § 11-2601.

There are any number of variations in the state laws and rules governing court-appointment of counsel, but the District of Columbia's procedure is typical of many jurisdictions in that the defendant is not responsible for setting the machinery of court-appointment in motion. *See* D.C. CODE § 11-2602. Rather, with the sole purpose of facilitating appointment of counsel, courts or their agents take the initiative by making inquiries about the defendant's financial status. *See* Appendix of State Statutes and Rules Governing Provision of Counsel to Indigent Defendants (hereinafter "Appendix"); *see, e.g.*, ALA. CODE § 15-12-5(a); ARK. R. CRIM. P. 8.2(a); CONN. GEN. STAT. ANN. § 37-1; FLA. R. CRIM. P. 3.111(b)(5)(B); GA. CODE ANN. § 17-12-24(a); IND. CODE ANN. § 35-33-7-6(a); ME. R. CRIM. P. 44(b); MASS. R. CRIM. P. 7(a)(1); OHIO R. CRIM. P. 44(D); VA. CODE ANN. § 19.2-159(C).

The District of Columbia is also representative in that a determination of indigency automatically triggers court-appointment without any further inquiry of the defendant, unless the defendant takes the initiative to explicitly waive his right to counsel. *See* Appendix; *see, e.g.*, ALASKA STAT. §18.85.100(b) ("at the time the court determines indigency" "the attorney services and facilities and the court costs shall be provided at public expense"); ARK. R. CRIM. P. 8.2(b) ("Whenever an indigent . . . does not knowingly and intelligently waive the appointment of counsel, the court shall appoint counsel to represent the indigent . . . ."); D.C. CODE § 11-2602 ("Unless the defendant . . . waives representation by counsel, the court, if satisfied after appropriate inquiry that the defendant . . . is financially unable to obtain counsel, shall appoint counsel to represent that person."); FLA. R. CRIM. P. 3.111(a) (An indigent person charged with

a qualifying offense "shall have counsel appointed . . . ."); IDAHO CODE ANN. § 19-853(c) ("If a court determines that the person is entitled to be represented by an attorney at public expense, it shall promptly notify the public defender or assign an attorney. . . ."); 725 ILL. COMP. STAT. ANN. § 5/109-1(b) ("The judge shall . . . [a]dvise the defendant of his right to counsel and if indigent shall appoint a public defender or licensed attorney . . . to represent him . . . ."); ME. R. CRIM. P. 44(a)(1) ("If the defendant in a proceeding in which the crime charged is [a qualifying offense] appears in any court without counsel, the court shall . . . assign counsel to represent the defendant . . . ."); MASS. R. CRIM. P. 7(a)(1) ("If the judge or special magistrate finds that the defendant is indigent . . . and has not knowingly waived the right to counsel . . . the Committee for Public Counsel Services shall be assigned to provide representation for the defendant."); N.H. REV. STAT. ANN. § 604-A:2(I) ("If . . . the commissioner of administrative services, is satisfied that the defendant is financially unable to obtain counsel, the court shall appoint counsel to represent him . . . ."); N.M. STAT. ANN. § 31-16-4(C) ("If the district court determines that the person is entitled to be represented by an attorney at public expense, it shall promptly assign an attorney who shall represent the person . . . ."); N.Y. R. UNIF. TRIAL CTS. § 200.26(c) ("Where it appears . . . that the defendant is financially unable to obtain counsel, the court shall . . . assign counsel."); OHIO R. CRIM. P. 44(A) ("Where a defendant charged with a serious offense is unable to obtain counsel, counsel shall be assigned to represent him . . . ."); PA. R. CRIM. P. 122(A)(2) ("Counsel shall be appointed . . . in all court cases, prior to the preliminary hearing to all defendants who are

without financial resources or who are otherwise unable to employ counsel."); R.I. R. DIST. CT. R. CRIM. P. 44 ("If a defendant appears in District Court without counsel, [and is charged with a qualifying offense], the court . . . shall assign counsel to represent the defendant . . . ."); S.C. APP. CT. R. 602 ("The officer before whom the arrested person is taken shall . . . [i]f the accused represents that he is financially unable to employ counsel, take his application for the appointment of counsel," and upon a determination of indigency, "the Clerk of Court or other officer shall immediately notify the Office of Public Defender . . . and the Public Defender shall immediately thereafter enter upon the representation of the accused."); TENN. CODE ANN. § 40-14-202(a) ("In all felony cases, if the accused is not represented by counsel and the court determines . . . that the accused is an indigent person who has not competently waived the right to counsel, the court shall appoint to represent the accused either the public defender . . . or . . . a competent attorney licensed in this state."); VA. CODE ANN. § 19.2-159(C) (Once the court has made a determination of indigency, "said court shall appoint competent counsel to represent the accused . . . ."); WASH. SUP. CT. CRIM. R. 4.1(c) ("If the defendant is not represented and is unable to obtain counsel, counsel shall be assigned by the court, unless otherwise provided.").

In these jurisdictions, the onus is on the court, not the defendant, to ensure that the defendant is represented absent a valid waiver. Thus, a defendant is not even required to request appointment of counsel, much less affirmatively accept appointment after it is conferred. *See, e.g.*, *Bradford v. State*, 927 S.W.2d 329, 335 (Ark. 1996) (where "the Sixth Amendment right to counsel had clearly attached, and counsel

had been appointed[,] [t]hough Bradford never formally requested counsel, the court's appointment provided a medium between herself and investigating officers."); FLA. R. CRIM. P. 3.111(d) ("The failure of a defendant to request appointment of counsel . . . shall not, in itself, constitute a waiver of counsel at any stage of the proceedings.").

In other jurisdictions where appointment is not automatic upon confirmation of indigency, courts are required to ask the defendant specifically if he wants to be represented, *see, e.g.*, CAL. PENAL CODE § 859; MICH. CT. R. 6.005(A); MONT. CODE ANN. § 46-8-101(1); OR. REV. STAT. § 135.040, and to guide eligible defendants toward court appointment. For example, in New Jersey, at the defendant's first court appearance, the judge is required to "ask the defendant specifically whether he or she wants counsel and record the defendant's answer on the complaint." N.J. R. CRIM. P. 3:4-2(b)(4). If the defendant asserts indigence and does not affirmatively waive his right to counsel, the judge must "*assure* that the defendant completes . . . and files" "the appropriate application form for public defender services." N.J. R. CRIM. P. 3:4-2(b)(5) (emphasis added). Qualifying defendants are referred to the Office of the Public Defender "no later than the pre-arraignment interview," and "[t]he defense counsel appointed by the Office of the Public Defender shall promptly file an appearance." N.J. R. CRIM. P. 3:8-3.

Finally, even in jurisdictions where a defendant is technically required to take the initiative to request counsel, *see* Appendix; *see, e.g.*, 16A ARIZ. REV. STAT. R. CRIM. P. 4.2(a); HAW. REV. STAT. § 802-3; MINN. STAT. ANN. § 611.16; MO. ANN. STAT. § 545.820; S.D. CODIFIED LAWS § 23A-40-6, this request is likely preceded and prompted by the court's constitu-

tionally, and in some jurisdictions statutorily, compelled notice that the defendant has a right to counsel.[5] *See Johnson v. Zerbst,* 304 U.S. at 465 (refusing to accord legal significance to "an accused's ignorant failure to claim his rights"); *Carnley*, 369 U.S. at 513 (reiterating that the right to be furnished counsel does not depend upon a request and refusing to find waiver where "the record does not show that the trial judge offered and petitioner declined counsel"); *see, e.g.*, *Oliver v. State*, 918 S.W.2d 690, 693 (Ark. 1996) ("The trial court must do more than just make an inquiry [into an accused's ability to retain counsel]. The court must explain to the accused that he is entitled, as a matter of law, to an attorney and must question him to see if he can afford to hire counsel."); HAW. REV. STAT. § 802-2 (requiring courts to advise defendants of their right to counsel and court appointment "[i]n every criminal case or proceeding in which a person entitled by law to representation by counsel appears without counsel . . . ."); WIS. STAT. ANN. § 970.02(1)(b) ("At the initial appearance the judge shall inform the defendant . . . [o]f his or her right to counsel and, in any case required by the U.S. or Wisconsin constitution, that an attorney will be appointed to represent him or her if he or she is financially unable to employ counsel.").

Regardless of how the appointment of counsel is initiated—whether by unilateral judicial action, inquiry by the court, or the defendant's prompted request for a lawyer—the common practice across

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[5] Notably, a number of these jurisdictions also give the trial court discretion to appoint counsel absent any request by the indigent defendant. *See, e.g.*, COLO. REV. STAT. ANN. § 21-1-103(1)(b); DEL. CODE ANN. tit. 29, § 4602(a); N.D. CENT. CODE § 29-07-01.1; UTAH CODE ANN. § 77-32-302(b).

states is that courts take the initiative to ensure broad and presumptive representation of eligible defendants. It is always the State, not the defendant, that has control over the process of appointment. Certainly no interjection of acceptance of appointment is anticipated or required. The Court should reject Louisiana's post-court-ordered-appointment-unprompted-acceptance approach because it would disrupt this equitable status quo.

II. SHIFTING THE FOCUS FROM THE COURT'S ACT OF APPOINTMENT TO AN INDIGENT DEFENDANT'S POST-APPOINTMENT RESPONSE TO DETERMINE IF THE DEFENDANT ENJOYS THE PROTECTION OF THE SIXTH AMENDMENT RIGHT TO COUNSEL IS ILLOGICAL, UNFAIR, AND UNWORKABLE.

Even if this Court were to decide that a change to the equitable status quo is needed and that it is necessary to determine, outside the well-established context of waiver, whether a defendant desires court-appointed counsel, this Court should still reject Louisiana's post-court-ordered-appointment-unprompted-acceptance approach because it fails to meaningfully elucidate whether an indigent defendant who has received court-appointed counsel actually wants a lawyer. Indeed, far from limiting the Sixth Amendment protections to those defendants who desire counsel, for the reasons discussed below, Louisiana's approach will silently strip many defendants of representation who fully desire it and, as did Mr. Montejo, believe that they have counsel.

A. It is illogical to require a defendant to "accept" a court order that in all respects operates as binding on the defendant and the appointed attorney, irrespective of any actions or statements by the defendant.

A requirement that a defendant affirmatively assent to the appointment of counsel is entirely inconsistent with the binding nature of the appointment order: like all court orders it is a purely judicial act that enters into force at the moment it is pronounced, and unless it is rescinded or vacated, no party has the authority to refuse it.

Court orders in criminal cases do not require "acceptance" by the defendant to take effect; they are binding at the time of issuance. For example, the Louisiana Code of Criminal Procedure explains that "[a] court possesses inherently all powers necessary for the . . . enforcement of its lawful orders." LA. CODE CRIM. P. ANN. art. 17. Because a court possesses its own inherent power to effectuate orders, the acquiescence of the defendant is immaterial. *See, e.g.*, *People v. Russell*, 684 N.W.2d 745, 753 n.28 (Mich. 2004) ("Defendant's *acceptance* of the trial court's discretionary ruling [denying defendant's request to appoint another counsel] was not required."); *Edwards v. Hare*, 682 F. Supp. 1528, 1531 (D. Utah 1988) ("[t]he appointment of counsel is . . . an inherently judicial act").

The particular irrelevance of the defendant's response to the court's order appointing counsel is reflected in the fact that—whether a criminal defendant stands silent or interjects unprompted that he assents—the defendant is sufficiently bound by the order that he cannot escape the relationship

without the express permission of the court. Thus, even where the defendant does nothing to suggest he has accepted court-ordered representation, the defendant cannot choose to be represented by another appointed attorney or dismiss the appointed attorney. In short, where a defendant is not authorized to say *no* to any aspect of the appointment, it is illogical to demand that he say *yes* to the same.

It is well-established that "the right to counsel of choice does not extend to defendants who require counsel to be appointed for them." *United States v. Gonzalez-Lopez*, 548 U.S. 140, 151 (2006). Defendants not only lack authority to modify the court's order by selecting appointed counsel of their choice, they also are unable to prevent the court from modifying the order and replacing appointed counsel with another attorney.[6] Defendants are likewise unable—regardless of whether they affirmatively "accepted" the attorney appointment—to dismiss the appointed counsel. Instead, "[a]fter a court appoints an attorney to represent an accused, a subsequent decision to replace that attorney is committed to the informed discretion of the appointing court." *United States v. Reyes*, 352 F.3d 511, 515 (1st Cir. 2003) (quotation marks and citation omitted).[7]

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[6] *E.g.*, *Yohey v. Collins*, 985 F.2d 222, 228 (5th Cir. 1993) (defendant "was not entitled to have [a particular lawyer] reappointed, regardless of his desire to keep [the particular lawyer] as his counsel"); N.H. REV. STAT. ANN. § 604-A:3 (conferring power on court to substitute appointed counsel); TENN. CODE ANN. § 40-14-205(b) (same).

[7] *E.g.*, *United States v. Garey*, 540 F.3d 1253, 1263 (11th Cir. 2008); *United States v. Webster*, 84 F.3d 1056, 1062 (8th Cir. 1996); *United States v. Schaff*, 948 F.2d 501, 503 (9th Cir. 1991); *United States v. Gallop*, 838 F.2d 105, 108 (4th Cir. 1988);

The restrictions on a defendant's ability to influence the appointment order reflect the practical reality that without such rules, criminal courts risk being bogged down in incessant requests for particular attorneys or simply different attorneys from clients who, by definition, never chose their lawyers in the first instance.[8] Yet, presumably, if the failure to affirmatively accept an order of appointment means that the attorney-client relationship has not yet been established, defendants would not be bound

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United States v. Padilla, 819 F.2d 952, 955 (10th Cir. 1987); *Wilson v. Mintzes*, 761 F.2d 275, 280 (6th Cir. 1985); *United States v. Brown*, 744 F.2d 905, 908 (2d Cir. 1984); *United States v. Morris*, 714 F.2d 669, 673 (7th Cir. 1983); *United States v. Welty*, 674 F.2d 185, 188 (3d Cir. 1982); *United States v. Young*, 482 F.2d 993, 995 (5th Cir. 1973).

[8] *See, e.g.*, *United States v. Mooneyham*, 473 F.3d 280, 292 (6th Cir. 2007) (consideration of a defendant's request for new counsel must be weighed against "the public's interest in the prompt and efficient administration of justice") (quotation marks and citation omitted); *Reyes*, 352 F.3d at 515 (consideration of a defendant's request for new counsel must be weighed against "the public's interest in the prompt, fair and ethical administration of justice") (quotation marks and citations omitted); *United States v. Ely*, 719 F.2d 902, 905 (7th Cir. 1983) ("There are practical reasons for not giving indigent criminal defendants their choice of counsel . . . indigent defendants cannot be allowed to paralyze the system by all flocking to one lawyer."); *McKee v. Harris*, 649 F.2d 927, 931 (2d Cir. 1981) ("certain restraints must be put on the reassignment of counsel lest the right be manipulated so as to obstruct the orderly procedure in the courts or to interfere with the fair administration of justice") (quotation marks and citation omitted); *United States v. Davis*, 604 F.2d 474, 478 (7th Cir. 1979) (The "policy not to honor a defendant's request for the appointment of a particular attorney . . . is rational and reasonably necessary to the orderly administration of the system of providing defense services to those financially unable to retain counsel on their own.").

by the court's order. A trial court would have no power to prevent the defendant from terminating a relationship that had not officially begun, and the "orderly administration of the system of providing defense services" that the current rules are designed to protect would be jeopardized. *United States v. Davis*, 604 F.2d 474, 478 (7th Cir. 1979).

The reality that appointment of counsel is a decision resting solely in the court's hands is further reflected in the ability of the court to hold an attorney in contempt for refusing to accept the appointment.[9] Even in the absence of any evidence that the defendant has "accepted" the appointment, the attorney is bound by the court's order. Likewise, states often specify that attorneys may not withdraw from representation of indigent defendants without permission of the court.[10] It is not the defendant that the attorney turns to for permission to withdraw, but the court that issued the appointment order.

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[9] *E.g., United States v. Accetturo*, 842 F.2d 1408, 1412 (3d Cir. 1988) (affirming contempt order in light of "inherent power [of courts] to appoint counsel, sometimes even over counsel's objection, to represent defendants in need of such representation"); *State v. Jones*, 726 S.W.2d 515, 521 (Tenn. 1987) (holding that attorney who refused to accept appointment to act as counsel for indigent defendant may be held in contempt, even though refusal premised on ethics opinion); *People v. Hutchinson*, 195 N.W.2d 787, 788 (Mich. Ct. App. 1972) (attorney's refusal to "undertake the defense of an indigent criminal defendant" constituted contempt); *see also Powell*, 287 U.S. at 65 ("Attorneys are officers of the court, and are bound to render service when required by such an appointment.").

[10] *E.g.*, ARK. R. CRIM. P. 8.2(c); S.C. APP. CT. R. 602(e)(2); TENN. CODE ANN. § 40-14-205(a); WASH. SUP. CT. CRIM. R. 3.1(e); *see also State v. Jones*, 923 P.2d 560, 562 (Mont. 1996) ("The grant or denial of a lawyer's motion to withdraw is within the discretion of the district court.").

A court order of appointment is further binding on counsel in that it triggers the attorney's obligations under the rules of professional responsibility. *See, e.g.*, Restatement (Third) of Law Governing Lawyers § 14(2) (2000) ("A relationship of client and lawyer arises when . . . a tribunal with power to do so appoints the lawyer to provide the services."); *id.* comment g ("When a court appoints a lawyer to represent a person, that person's consent may ordinarily be assumed absent the person's rejection of the lawyer's services.").[11] State ethical and professional standards for non-capital and capital cases make clear that it is *appointment* that triggers an attorney's obligation to interview the defendant,[12]

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[11] *See also James v. Chase Manhattan Bank*, 173 F. Supp. 2d 544, 551 n.4 (N.D. Miss. 2001) ("The attorney's duties to his client arise when the attorney-client relationship is created, which, under Mississippi law, is when . . . 'a tribunal with power to do so appoints the lawyer to provide the services'") (quoting Restatement (Third) of Law Governing Lawyers § 14); *Burke v. Lewis*, 122 P.3d 533, 541-42 (Utah 2005) ("a lawyer-client relationship arises when . . . 'a tribunal with power to do so appoints the lawyer to provide the services'") (quoting Restatement (Third) of Law Governing Lawyers § 14); *In re Zamer G.*, 63 Cal. Rptr. 3d 769, 776 n.7 (Cal. Ct. App. 2007) ("For appointed counsel, the attorney-client relationship commences upon counsel's appointment.") (quotation marks, citation, and modification omitted).

[12] *E.g.*, Oregon Indigent Defense Performance Standards, Strd. 1.2 ("As soon as practicable after being retained or *appointed*, counsel should contact the client and conduct an initial client interview") (emphasis added); California Guidelines on Indigent Defense Services Delivery Systems (Dec. 1990) Part I, 7 ("Whenever possible, interviews of clients who are in custody should be conducted within 24-hours of *appointment*. Clients out of custody should be interviewed no later than 72 hours after *appointment* whenever possible.") (emphasis added); Guidelines of the Georgia Indigent Defense Counsel for the

assemble a defense team,[13] and begin investigating the case.[14] Adoption of an affirmative "acceptance" approach would thus place appointed attorneys in the peculiar position of having ethical and professional responsibilities to a person the court does not yet recognize as their client.[15]

In sum, it is illogical to suggest that a defendant must affirmatively "accept" court-ordered appointment for the purposes of the Sixth Amendment protection against police-initiated interrogations when, even in the absence of such "acceptance," the

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Operation of Local Indigent Defense Programs § 1.2 ("Counsel shall make contact with the person promptly after actual notice of *appointment*.") (emphasis added); Massachusetts Guidelines Governing Representation of Indigents in Criminal Cases § 1.3(b) ("counsel should visit the client [in custody] within three days of receiving the *assignment*.") (emphasis added); North Dakota Commission on Legal Counsel for Indigents, Minimum Attorney Performance Standards, Criminal Matters, Strd. 6.1 ("Counsel or a representative . . . should meet with incarcerated clients within 24 hours after *assignment* to the case.") (emphasis added); State Bar of Michigan Standards for Assigned Counsel § II(7) ("Counsel shall conduct a timely interview of the client after being *appointed* . . . .") (emphasis added).

[13] *E.g.*, Nevada Indigent Defense Standards of Performance, Strd. 2.6 ("As soon as possible after *appointment*, counsel should assemble a defense team . . . .") (emphasis added).

[14] *E.g.*, North Dakota Commission on Legal Counsel for Indigents, Minimum Attorney Performance Standards, Criminal Matters, Strd. 7.1(6) ("When appropriate, counsel should attempt to view the scene of the alleged offense as soon as possible after counsel is *appointed*.") (emphasis added).

[15] Appointed attorneys would be forced to weigh the requirement, for example, that they "make contact with the person promptly after actual notice of appointment," Guidelines of the Georgia Indigent Defense Counsel for the Operation of Local Indigent Defense Programs § 1.2, against the risk that any conversation would not be recognized as privileged.

order is self-effectuating and binds both the defendant and the appointed counsel in all respects.

B. It is unfair to demand that an indigent defendant interject unprompted his agreement with a court's appointment order.

An indigent defendant who is standing in the midst of the hustle and bustle of a crowded criminal court and is being rapidly processed in an intimidating don't-speak-unless-you're-spoken-to atmosphere has no reason to think he is required to make an unprompted statement to accept what the court has just given him. It is unjust to infer waiver of a fundamental right from a defendant's silence in this context.

To begin with, it is anomalous and unjust to consider the right to counsel of fundamental importance because of the common lack of understanding of the criminal justice process by defendants, *see* Point I.A. *supra*, while at the same time holding that an uncounseled defendant who fails to speak out at the proper time has affirmatively decided to forgo the fundamental protections of counsel. The need to accept that which one has already been given—by court order no less—is hardly intuitive. Indeed, it is just the type of formalistic, technical requirement that criminal defendants, particularly indigent defendants, "who are often unschooled in the intricacies of our criminal justice system," are unlikely either to be aware of or to understand. *United States v. Teague*, 908 F.2d 752, 759 (11th Cir. 1990) *rev'd on other grounds*, 953 F.2d 1525 (11th Cir. 1992) (en banc) (holding that "the absence of an on the record objection by the defendant himself" did not determine whether the defendant affirmatively decided not to

testify); *see also Chang v. United States*, 250 F.3d 79, 84 (2d Cir. 2001) (refusing to penalize the defendant for his silence because "[a] defendant who is ignorant of the right to testify has no reason to seek to interrupt the proceedings to assert that right"); *United States v. Ortiz*, 82 F.3d 1066, 1071 (D.C. Cir. 1996) (rejecting rule "requiring that the defendant directly express to the court during the trial the desire to testify, in recognition of the impracticability of placing a burden on the defendant to assert a right of which he might not be aware . . . ."); *see also* Point I.A. *supra* (discussing the disabilities and impairments that are over-represented in the indigent defendant population).

Even were an indigent defendant able to discern a need to interject acceptance, a "defendant might well feel too intimidated to speak out of turn in this fashion." *Underwood v. Clark*, 939 F.2d 473, 476 (7th Cir. 1991); *see also State v. Robinson*, 982 P.2d 590, 597 (Wash. 1999) (refusing to "plac[e] the burden upon defendants to speak up in court to make their desire to testify known" because "defendants might feel 'too intimidated to speak out of turn'") (quoting *Underwood*, 939 F.2d at 476).

It is also likely that an indigent defendant has in fact been instructed by the court *not* to speak. "[R]outine instructions to defendants regarding the protocols of the court often include the admonition that they are to address the court only when asked to do so." *United States v. Mullins*, 315 F.3d 449, 455 (5th Cir. 2002) ("[d]eclining to place upon the defendant the responsibility to address the court directly" for this reason). Indeed, as a general rule, "in the interests of decorum and the smooth administration of justice, defendants who speak out of turn at their own trials are quickly reprimanded,

and sometimes banned from the courtroom, by the court." *Teague*, 908 F.2d at 759. Furthermore, requiring an indigent defendant to interject unprompted his acceptance of the court's order is particularly unjust where, as part of the same proceeding where counsel is appointed, the defendant has typically just been admonished that "he need make no statement and any statement made may be used against him." OHIO R. CRIM. P. R. 5(A).[16]

The fact that "those untrained in the law do not usually understand their rights," *Swearingen v. State*, 18 P.3d 998, 1001 (Mont. 2001), coupled with the impairments of the indigent defendant population, the intimidating posture of facing "the

[16] *See, e.g.*, COLO. CRIM. P. R. 5(a)(2) ("[I]t is the duty of the court to inform the defendant and make certain that the defendant understands . . . [that t]he defendant need make no statement and any statement made can and may be used against the defendant . . . . If indigent, the defendant has the right to request the appointment of counsel or consult with the public defender before any further proceedings are held."); IOWA CODE ANN. R. 2.2(2) ("The magistrate shall inform a defendant . . . of the defendant's right to request the appointment of counsel if the defendant is unable by reason of indigency to obtain counsel . . . [and] that the defendant is not required to make a statement and that any statement made by the defendant may be used against the defendant."); KY. R. CRIM. P. 3.05 ("The defendant shall be informed . . . that he or she is not required to make a statement and that any statement made by him or her may be used against him or her. . . . [T]he judge shall appoint counsel to represent the defendant unless he or she elects to proceed without counsel."); N.D. R. CRIM. P. 5(b)(1) ("The magistrate must inform the defendant of . . . the defendant's right to remain silent; that any statement made by the defendant may later be used against the defendant; . . . the defendant's right to the assistance of counsel before making any statement or answering any questions; . . . the defendant's right to have legal services provided at public expense . . . .").

awesome power of the State," *Brewer v. Williams*, 430 U.S. 387, 409 (1977) (Marshall, J., concurring), and the general rule that "[t]he defendant is expected to remain silent and speak only when spoken to," *People v. Brown*, 774 N.E.2d 186, 192 (N.Y. 2002), are all factors that "tend to discourage boldness, notwithstanding the occasional outburst by a defendant." *Ortiz*, 82 F.3d at 1072. It is unfair to punish an indigent defendant for failing to speak up unprompted in this context.

C. It is impractical and unworkable to make a fundamental constitutional right contingent on what is said or not said at a typically rushed, informal, and often unrecorded proceeding.

As discussed above, *see* Point I.B., most states do not currently have in place a colloquy or other mechanism for ascertaining a defendant's "acceptance" of the appointment of counsel; the standard operative presumption is that the court must appoint an attorney in the absence of a knowing and intelligent waiver or retention of private counsel. Indeed, the focus of these initial proceedings is often on processing crowded criminal dockets as efficiently as possible, as reflected in the common practice of informing defendants of their rights as a group. Moreover, these proceedings are often not recorded. As a result, a new approach that requires courts to determine whether a defendant affirmatively "accepted" the appointment of counsel would force judges to draw conclusions about this fundamental right on the basis of incomplete and imprecise records.

Many jurisdictions conduct the initial proceeding at which counsel is appointed in an expeditious manner,

informing criminal defendants of their rights en masse.[17] Sometimes courts provide defendants with information about their constitutional rights in a written pamphlet or brochure.[18] The following account provides a snapshot of the nature of these proceedings in one jurisdiction, where prisoners arrested during the previous 24 hours are processed,

> during a period of time which can only be described as controlled chaos. The prisoners are brought into the chapel of the Dade County Jail at 9:00 a.m. They remain in the chapel during the initial appearances which are conducted by

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[17] *E.g.*, *State v. Fitch*, 753 So.2d 429, 433 (La. Ct. App. 2000) (acknowledging the practice); *D.C.W. v. State*, 775 So.2d 363, 364 (Fla. Dist. Ct. App. 2000) (same); *Isaac v. State*, 516 S.E.2d 575, 577 (Ga. Ct. App. 1999) (same); *Vernlund v. State*, 589 N.W.2d 307, 309 (Minn. Ct. App. 1999) (same); *State v. Berlin*, 588 N.W.2d 866, 867 (N.D. Ct. App. 1999) (same); *Jones v. State*, 442 S.E.2d 908, 909 (Ga. Ct. App. 1994) (same); *McMillan v. State*, 727 S.W.2d 582, 583-84 (Tex. Crim. App. 1987) (same); *see also* The Spangenberg Group, *Status of Indigent Defense in New York: A Study for Chief Judge Kaye's Commission on the Future of Indigent Defense Services*, 112 (June 2006) ("[I]n local courts with large dockets [in New York], some judges do not normally have the time to explain the right to counsel to each individual defendant, but provide a brief explanation to all persons sitting in courtrooms at the beginning of the docket.").

[18] *E.g.*, *State v. Bayer*, 656 N.E.2d 1314, 1318 (Ohio Ct. App. 1995) ("At the initial appearance . . . appellant was allegedly provided with a copy of a pamphlet prepared by the [Court] which appellee claims fulfilled these dictates [regarding informing defendant of risks of proceeding pro se]. Then, prior to addressing appellant directly, the court read a standardized introduction to all who were in the courtroom. . . . ") (footnote omitted); *Jones*, 442 S.E.2d at 909 (defendant "appeared at a mass arraignment and was provided a copy of a two-page document" which included information about the right to appointed counsel).

> video link to the courtroom across the street. The magistrate is in the courtroom along with an assistant state attorney, assistant public defender and any friends or relatives of the defendants who choose to attend. The defendants are handed the affidavits [of indigency] and then listen to video taped presentations by judges who advise them of their constitutional rights and inform them of the nature and purpose of the affidavits. The video taped instructions are played first in English, then in Spanish and then in Creole. After the videos are played the defendants use whatever time is left before the hearings begin at 10:00 a.m. to fill out the affidavits. During this time the screeners try to answer questions and assist with the completion of the affidavits.

Office of Public Defender v. State, 714 So. 2d 1083, 1086 n.3 (Fla. Dist. Ct. App. 1998) (Sorondo, J., specially concurring).[19] Louisiana's post-court-ordered-appointment-unprompted-acceptance approach is ill-suited to this type of group proceeding.

Another obstacle facing judges charged with reviewing a proceeding at which counsel was appointed

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[19] This description was provided as "a factual background," in a case where a challenge was raised to the failure of magistrates to make indigency determinations before appointing counsel at the initial appearance, in contravention of the state rule. 714 So. 2d at 1086. "Although not necessary for the resolution of this case," *id*. at 1085, Judge Sorondo "elaborate[d] on the present system" to explain that the magistrates had adopted a practice that was inconsistent with the rule because the "enormous volume of cases" made it extremely difficult to balance "the need to appoint counsel to indigent defendants at the first appearance" with "securing independent corroboration" of defendants' indigency representations. *Id*. at 1086.

is the reality that these proceedings are not consistently recorded. For example, in New York, the judges that "play the most significant role of any other judge in the state in deciding which defendants are appointed counsel," are the judges of the town and village courts: they have "trial jurisdiction in misdemeanors" and "preliminary jurisdiction for felony offenses." The Spangenberg Group, *Status of Indigent Defense in New York: A Study for Chief Judge Kaye's Commission on the Future of Indigent Defense Services*, 110, 104, iv (June 2006).[20] Town and villages courts are "the courts of first instance for a large number of defendants," *id*. at 110, but their "proceedings are not required to be on the record," *id*. at v, and they are not required to "officially report their decisions." *Id*. at 103. Just as the absence of a record from these courts often makes it "difficult or impossible for a defendant to adequately exercise the right to appeal a matter decided by a local justice," it would be similarly difficult to review a defendant's "acceptance" of the order of appointment. *Id*. at v.

In the absence of a clear record of the hearing at which counsel is appointed, trial and appellate courts who review those proceedings face difficult problems of proof and may be required to hold evidentiary hearings and hear testimony from witnesses who were present at appointment. Thus for example, in *In re Pauley*, 318 S.E.2d 418 (W.Va. 1984), the reviewing court was forced to weigh the contentions of the magistrate judge against the testimony of the arresting officer regarding what happened "when [the

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[20] As the Louisiana Supreme Court has noted, "the Spangenberg Group, [is] a nationally known firm expert in indigent defense systems." *State v. Peart*, 621 So.2d 780, 789 n.8 (La. 1993).

magistrate judge] tried to advise [the defendant] of his rights." *Id*. at 421; *see also State v. Bayer*, 656 N.E.2d 1314, 1319 n.9 (Ohio Ct. App. 1995) (court considered affidavit from bailiff "aver[ing] that appellant was present in the courtroom when the statement [of rights] was read by the judge").[21]

Addressing these problems would be prohibitively time-consuming and costly. The most recent available data from the Bureau of Justice Statistics shows that "[i]n 1999 indigent criminal defense providers in the 100 largest counties received 4.2 million cases." Carol J. DeFrances, Ph.D., Marika F. X. Litras, Ph.D., U.S. Dept. of Justice, *Indigent Defense Services in Large Counties, 1999*, p. 4 (2000), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/idslc99.pdf.[22] "The average number of cases per county was 43,480." *Id*. The magnitude of the indigent defense caseload is also reflected in data demonstrating that "approxi-

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[21] *See generally State v. Bush*, 873 So. 2d 795, 799 (La. Ct. App. 2004) (noting that "there is no transcript and . . . the minute entry and commitment are silent as to whether defendant was advised of his right to counsel"); *State v. Clark*, 26 S.W.3d 448, 456 (Mo. Ct. App. 2000) ("[t]he entry is silent as to whether Appellant was informed of her right to counsel, whether she said she would retain counsel, or whether she requested appointed counsel"); *Benson v. State*, 160 P.3d 161, 163 (Alaska Ct. App. 2007) (record was not clear as to whether the defendant was eligible for the appointment of counsel because the court had "only the log notes of the hearing."); *see also Ebersole v. State*, 428 P.2d 947, 950 (Idaho 1967) ("The District Judge who presided at the [initial] proceedings was called as a witness by the state and testified" about what he remembered telling the defendant about the defendant's rights.).

[22] Because of the way data was collected, the 4.2 million case count is actually "an underestimate of the total number of indigent cases handled in those counties." *Id.* at 8.

mately 66% of felony Federal defendants and 84% of felony defendants in large State courts were represented by public defenders or assigned counsel." Caroline Wolf Harlow, Ph.D., U.S. Dept. of Justice, Bureau of Justice Statistics, *Defense Counsel in Criminal Cases*, p. 1 (2000), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/dccc.pdf.

In sum, replacing the procedure where a court orders the appointment of counsel and the defendant is not required to say anything with a process by which the judge is required to ascertain whether the defendant has accepted that appointment would impose an enormous burden on the courts and thwart the "state interest in the fair and efficient administration of justice." *Martinez*, 528 U.S. at 163. Criminal courts would be burdened not only by the introduction of a new procedural step in the initial proceeding for approximately four million indigent defendants, but by the need to consistently and accurately record and preserve the transcripts of all of those hearings.

* * *

An indigent defendant, although desirous of representation by court-appointed counsel, is highly unlikely to interject unprompted that he accepts a court's appointment order. Even if a defendant had the wherewithal to do so, there may not be a record of this assenting outburst. As a result, Louisiana's approach not only fails to elucidate whether an indigent defendant truly seeks representation, but actually thwarts representation of indigent defendants by subjecting them to unfair and illogical demands.

CONCLUSION

For all the reasons set forth above, *amici* respectfully request that the judgment of the Louisiana Supreme Court be reversed.

Respectfully submitted,

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APPENDIX OF STATE STATUTES AND RULES GOVERNING PROVISION OF COUNSEL TO INDIGENT DEFENDANTS [1]

Alabama

- The court or its agents must inquire about a defendant's financial status. ALA. CODE § 15-12-5(a) ("The trial judge first having cognizance of a criminal or juvenile proceeding in his court shall determine if an accused person or petitioner for postconviction relief is an indigent defendant.").
- The court automatically appoints counsel upon a finding of indigency. ALA. CODE § 15-12-5(d) ("The judge making a determination of indigency shall provide legal representation for the indigent defendant.").

Alaska

- The court automatically appoints counsel upon a finding of indigency. ALASKA STAT. §18.85.100(d) ("If a court determines . . . that an indigent person is entitled to representation by an attorney at public expense, the court shall promptly notify the agency or the office of public advocacy.").

Arizona

- The court must advise the defendant of the right to counsel. 16A ARIZ. REV. STAT. R. CRIM. P. 4.2(a)(5) ("At the suspect's initial appearance, the magis-

[1] This appendix includes every state and the District of Columbia, with the exception of Louisiana and Mississippi which, pursuant to their case law, adopt a post-court-ordered-appointment-unprompted-acceptance approach to determining when a defendant is represented.

trate shall . . . [i]nform the defendant of the right to counsel . . . .").

- The court appoints counsel upon the defendant's request. 16A Ariz. Rev. Stat. R. Crim. P. 4.2(a)(5) ("At the suspect's initial appearance, the magistrate shall . . . [a]ppoint counsel if the suspect is eligible for and requests appointed counsel.").

Arkansas

- The court or its agents must inquire about a defendant's financial status. ARK. R. CRIM. P. 8.2(a) ("An accused's desire for, and ability to retain, counsel should be determined by a judicial officer before the first appearance, whenever practicable.").
- The court automatically appoints counsel upon a finding of indigency. ARK. R. CRIM. P. 8.2(b) ("Whenever an indigent is charged with a criminal offense and, upon being brought before any court, does not knowingly and intelligently waive the appointment of counsel, the court shall appoint counsel to represent the indigent.").

California

- The court must ask the defendant if he wants court-appointed counsel. CAL. PENAL CODE § 859 ("The magistrate shall immediately deliver to the defendant a copy of the complaint, inform the defendant that he or she has the right to have the assistance of counsel, ask the defendant if he or she desires the assistance of counsel, and allow the defendant reasonable time to send for counsel.").

Colorado

- The court must advise the defendant of the right to counsel. COLO. REV. STAT. ANN. § 5(2) ("At the first

appearance of the defendant in court, it is the duty of the court to inform the defendant and make certain that the defendant understands . . . (II) The right to counsel; (III) If indigent, the defendant has the right to request the appointment of counsel or consult with the public defender before any further proceedings are held . . . .").

- The court appoints counsel upon the defendant's request or upon the court's own motion. COLO. REV. STAT. ANN. § 21-1-103(1)(a) ("The state public defender shall represent as counsel . . . each indigent person who is under arrest for or charged with committing a felony if: (a) The defendant requests it . . . ."); COLO. REV. STAT. ANN. § 21-1-103(1)(b) ("The state public defender shall represent as counsel . . . each indigent person who is under arrest for or charged with committing a felony if . . . [t]he court, on its own motion or otherwise, so orders and the defendant does not affirmatively reject, of record, the opportunity to be represented by legal counsel in the proceeding.").

Connecticut

- The court or its agents must inquire about a defendant's financial status. CONN. GEN. STAT. ANN. § 37-1 ("The judicial authority shall refer the defendant to the public defender for an investigation of indigency . . . .").
- The court automatically appoints counsel upon a finding of indigency. CONN. GEN. STAT. ANN. § 37-1 ("If the judicial authority determines after investigation by the public defender that the defendant is indigent, the judicial authority may designate the public defender or a special public defender to represent the defendant.").

Delaware

- The court appoints counsel upon the defendant's request or upon the court's own motion. DEL. CODE ANN. tit. 29, § 4602(a) ("The Public Defender shall represent, without charge, each indigent person who is under arrest or charged with a crime, if: (1) The defendant requests it . . . ."); DEL. CODE ANN. tit. 29, § 4602(b) ("The Public Defender shall represent, without charge, each indigent person who is under arrest or charged with a crime, if . . . (2) The court, on its own motion or otherwise, so orders and the defendant does not affirmatively reject of record the opportunity to be so represented.").

District of Columbia

- The court or its agents must inquire about a defendant's financial status. D.C. CODE § 11-2602 ("Unless the defendant or respondent waives representation by counsel, the court, if satisfied after appropriate inquiry that the defendant or respondent is financially unable to obtain counsel, shall appoint counsel to represent that person.").
- The court automatically appoints counsel upon a finding of indigency. D.C. CODE § 11-2602 ("Unless the defendant or respondent waives representation by counsel, the court, if satisfied after appropriate inquiry that the defendant or respondent is financially unable to obtain counsel, shall appoint counsel to represent that person.").

Florida

- The court or its agents must inquire about a defendant's financial status. FLA. R. CRIM. P. 3.111(b)(5)(B) ("Before appointing a public defen-

der, the court shall . . . make inquiry into the financial status of the accused . . . . The accused shall respond to the inquiry under oath.").

- The court automatically appoints counsel upon a finding of indigency. FLA. R. CRIM. P. 3.111(a) ("A person entitled to appointment of counsel as provided herein shall have counsel appointed when the person is formally charged with an offense, or as soon as feasible after custodial restraint, or at the first appearance before a committing judge, whichever occurs earliest.").

Georgia

- The court or its agents must inquire about a defendant's financial status. GA. CODE ANN. § 17-12-24(a) ("The circuit public defender . . . shall determine if a person or juvenile arrested, detained, or charged in any manner is an indigent person entitled to representation under this chapter.").
- The court must ask the defendant if he wants court-appointed counsel. GA. UNIF. R. SUP. CT. 26.1(C) ("At the first appearance, the judicial officer shall . . . [d]etermine whether or not the accused desires and is in need of an appointed attorney . . . ."); GA. UNIF. R. MAG. CT. 25.1 ("At the first appearance, the judicial officer shall . . . [d]etermine whether or not the accused desires and is in need of an appointed attorney . . . .").

Hawaii

- The court must advise the defendant of the right to counsel. HAW. REV. STAT. § 802-2 ("In every criminal case or proceeding in which a person entitled by law to representation by counsel ap-

pears without counsel, the judge shall advise the person of the person's right to representation by counsel and also that if the person is financially unable to obtain counsel, the court may appoint one at the cost to the State.").

- The court appoints counsel upon the defendant's request. HAW. REV. STAT. § 802-3 ("Any person entitled to representation by a public defender or other appointed counsel may at any reasonable time request any judge to appoint counsel to represent the person.").

Idaho

- The court automatically appoints counsel upon a finding of indigency. IDAHO CODE ANN. § 19-853(c) ("If a court determines that the person is entitled to be represented by an attorney at public expense, it shall promptly notify the public defender or assign an attorney, as the case may be.").

Illinois

- The court automatically appoints counsel upon a finding of indigency. 725 ILL. COMP. STAT. ANN. § 5/109-1(b) ("The judge shall . . . [a]dvise the defendant of his right to counsel and if indigent shall appoint a public defender or licensed attorney at law of this State to represent him.").

Indiana

- The court or its agents must inquire about a defendant's financial status. IND. CODE ANN. § 35-33-7-6(a) ("Prior to the completion of the initial hearing, the judicial officer shall determine whether a person who requests assigned counsel is indigent.").

- The court must advise the defendant of the right to counsel. IND. CODE ANN. § 35-33-7-5 ("At the initial hearing of a person, the judicial officer shall inform him orally or in writing: (1) that he has a right to retain counsel . . . .").
- The court appoints counsel upon the defendant's request. IND. CODE ANN. § 35-33-7-6(a) ("If the person [who requests assigned counsel] is found to be indigent, the judicial officer shall assign counsel to the person.").

Iowa

- The court must ask the defendant if he wants court-appointed counsel. IOWA R. CRIM. P. 2.8(1) ("If the defendant appears for arraignment without counsel, the court must, before proceeding further, inform the defendant of the right to counsel and ask if the defendant desires counsel; and if the defendant does, and is unable by reason of indigency to employ any, the court must appoint defense counsel . . . .").

Kansas

- The court automatically appoints counsel upon a finding of indigency. KAN. STAT. ANN. § 22-4503(c) ("If it is determined that the defendant is not able to employ counsel . . . the court shall appoint an attorney from the panel for indigents' defense services or otherwise in accordance with the applicable system for providing legal defense services for indigent persons prescribed by the state board of indigents' defense services for the county or judicial district.").

Kentucky

- The court automatically appoints counsel upon a finding of indigency. KY. R. CRIM. P. 3.05(2) ("If . . .

the defendant is financially unable to employ counsel, the judge shall appoint counsel to represent the defendant unless he or she elects to proceed without counsel.").

Maine

- The court or its agents must inquire about a defendant's financial status. ME. R. CRIM. P. 44(b) ("The court shall determine whether a defendant has sufficient means with which to employ counsel and in making such determination may examine the defendant under oath concerning the defendant's financial resources.").
- The court automatically appoints counsel upon a finding of indigency. ME. R. CRIM. P. 44(a)(1) ("If the defendant in a proceeding in which the crime charged is murder or a Class A, Class B, or Class C crime appears in any court without counsel, the court shall advise the defendant of the defendant's right to counsel and assign counsel to represent the defendant at every stage of the proceeding unless the defendant elects to proceed without counsel or has sufficient means to employ counsel.").

Maryland

- The court must advise the defendant of the right to counsel. MD. R. 4-215 ("At the defendant's first appearance in court without counsel . . . the court shall: (1) Make certain that the defendant has received a copy of the charging document containing notice as to the right to counsel."); MD. R. 4-202(a) ("A charging document . . . shall contain [the admonition that] . . . 3. You have the right to have a lawyer. 4. A lawyer can be helpful to you by: (A) explaining the charges in this paper; (B) telling you the possible penalties; (C) helping you

at trial; (D) helping you protect your constitutional rights; and (E) helping you to get a fair penalty if convicted. 5. Even if you plan to plead guilty, a lawyer can be helpful.").

- The court appoints counsel upon the defendant's request. *See* MD. R. 4-202(a) ("A charging document also shall contain [the admonition that] . . . 6. If you want a lawyer but do not have the money to hire one, the Public Defender may provide a lawyer for you. The court clerk will tell you how to contact the Public Defender. 7. If you want a lawyer but you cannot get one and the Public Defender will not provide one for you, contact the court clerk as soon as possible. 8. DO NOT WAIT UNTIL THE DATE OF YOUR TRIAL TO GET A LAWYER. If you do not have a lawyer before the trial date, you may have to go to trial without one.").

Massachusetts

- The court or its agents must inquire about a defendant's financial status. MASS. R. CRIM. P. 7(a)(1) ("[T]he probation department shall make a report to the court of the pertinent information reasonably necessary to determination of the issues of bail and indigency.").
- The court automatically appoints counsel upon a finding of indigency. MASS. R. CRIM. P. 7(a)(1) ("If the judge or special magistrate finds that the defendant is indigent or indigent but able to contribute and has not knowingly waived the right to counsel under the procedures established in Supreme Judicial Court Rule 3:10, the Committee for Public Counsel Services shall be assigned to provide representation for the defendant.").

Michigan

- The court must ask the defendant if he wants court-appointed counsel. MICH. CT. R. 6.005(A) ("At the arraignment on the warrant or complaint, the court must advise the defendant . . . of entitlement to a lawyer's assistance at all subsequent court proceedings, and . . . that the court will appoint a lawyer at public expense if the defendant wants one and is financially unable to retain one. The court must question the defendant to determine whether the defendant wants a lawyer and, if so, whether the defendant is financially unable to retain one.").

Minnesota

- The court must advise the defendant of the right to counsel. 49 MINN. R. CRIM. P. 5.02(1) ("[T]he court shall advise the defendant of the right to counsel and the appointment of the district public defender if the defendant has been determined to be financially unable to afford counsel.").
- The court appoints counsel upon the defendant's request. MINN. STAT. ANN. § 611.16 ("Any person . . . entitled by law to representation by counsel, may at any time request the court in which the matter is pending, or the court in which the conviction occurred, to appoint a public defender to represent the person.").

Missouri

- The court appoints counsel upon the defendant's request. MO. ANN. STAT. § 545.820 ("it shall be the duty of the court to assign him counsel, at his request"); MO. ANN. STAT. § 600.048(2) ("A person . . . may request that legal representation be furnished to him by the state.").

Montana

- The court must ask the defendant if he wants court-appointed counsel. MONT. CODE. ANN. § 46-8-101(1) ("During the initial appearance before the court, every defendant must be informed of the right to have counsel and must be asked if the aid of counsel is desired.").

Nebraska

- The court automatically appoints counsel upon a finding of indigency. NEB. REV. ST. § 29-3902 ("At a felony defendant's first appearance before a court . . . [i]f the court determines him or her to be indigent, it shall formally appoint the public defender to represent him or her . . . .").

Nevada

- The court must advise the defendant of the right to counsel. NEV. R. CRIM. P. 171.186 ("The magistrate or master shall inform the defendant of the complaint against him and of any affidavit filed therewith, of his right to retain counsel, of his right to request the assignment of counsel if he is unable to obtain counsel . . . .").
- The court appoints counsel upon the defendant's request. NEV. R. CRIM. P. 171.188(1) ("Any defendant charged with a public offense who is an indigent may, by oral statement to the district judge, justice of the peace, municipal judge or master, request the appointment of an attorney to represent him.").

New Hampshire

- The court automatically appoints counsel upon a finding of indigency. N.H. REV. STAT. ANN. § 604-A:2(I) ("If . . . the commissioner of administrative

services, is satisfied that the defendant is financially unable to obtain counsel, the court shall appoint counsel to represent him.").

New Jersey

- The court must ask the defendant if he wants court-appointed counsel. N.J. R. CRIM. P. 3:4-2(b) ("At the defendant's first appearance before a judge . . . the judge shall . . . ask the defendant specifically whether he or she wants counsel and record the defendant's answer on the complaint.").

New Mexico

- The court automatically appoints counsel upon a finding of indigency. N.M. STAT. ANN. § 31-16-4(C) ("If the district court determines that the person is entitled to be represented by an attorney at public expense, it shall promptly assign an attorney who shall represent the person in accordance with the terms of his assignment.").

New York

- The court automatically appoints counsel upon a finding of indigency. N.Y. R. UNIF. TRIAL. CTS. § 200.26(c) ("Where it appears, pursuant to paragraph (ii) of subdivision (b) of this section, that the defendant is financially unable to obtain counsel, the court shall, prior to issuing a securing order fixing bail or committing the defendant to the custody of the sheriff, assign counsel.").

North Carolina

- The court automatically appoints counsel upon a finding of indigency. N.C. GEN. STAT. § 7A-450(b) ("Whenever a person, under the standards and procedures set out in this Subchapter, is determined to be an indigent person entitled to counsel,

it is the responsibility of the State to provide him with counsel and the other necessary expenses of representation.").

North Dakota

- The court must advise the defendant of the right to counsel. N.D. R. CRIM. P. 5(b)(1) ("The magistrate must inform the defendant of the following . . . (C) the defendant's right to the assistance of counsel before making any statement or answering any questions; (D) the defendant's right to be represented by counsel at each and every stage of the proceedings . . . .").
- The court appoints counsel upon the defendant's request or upon the court's own motion. N.D. CENT. CODE § 29-07-01.1 ("A defendant requesting representation by counsel at public expense, or for whom counsel provided at public expense without a request is considered appropriate by the court, shall submit an application for indigent defense services.").

Ohio

- The court or its agents must inquire about a defendant's financial status. OHIO R. CRIM. P. 44(D) ("The determination of whether a defendant is able or unable to obtain counsel shall be made in a recorded proceeding in open court.").
- The court automatically appoints counsel upon a finding of indigency. OHIO R. CRIM. P. 44(A) ("Where a defendant charged with a serious offense is unable to obtain counsel, counsel shall be assigned to represent him at every stage of the proceedings from his initial appearance before a court through appeal as of right, unless the

defendant, after being fully advised of his right to assigned counsel, knowingly, intelligently, and voluntarily waives his right to counsel . . . .").

Oklahoma

- The court must advise the defendant of the right to counsel. OKLA. STAT. tit. 22, § 251 ("When the defendant is brought before a magistrate upon an arrest, either with or without a warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and also of his right to waive an examination before any further proceedings are had.").
- The court appoints counsel upon the defendant's request. *See* OKLA. STAT. tit. 22, § 1355A(1) ("When an indigent requests representation by the Oklahoma Indigent Defense System, such person shall submit an appropriate application to the court clerk, which shall state that the application is signed under oath and under the penalty of perjury and that a false statement may be prosecuted as such.").

Oregon

- The court must ask the defendant if he wants court-appointed counsel. OR. REV. STAT. § 135.040 ("If the defendant appears for arraignment without counsel, the defendant shall be informed by the court that it is the right of the defendant to have counsel before being arraigned and shall be asked if the defendant desires the aid of counsel."); OR. REV. STAT. § 135.045(1)(a) ("If the defendant in a criminal action appears without counsel at arraignment or thereafter, the court shall determine

whether the defendant wishes to be represented by counsel.").

Pennsylvania

- The court automatically appoints counsel upon a finding of indigency. PA. R. CRIM. P. 122(A)(2) ("Counsel shall be appointed . . . in all court cases, prior to the preliminary hearing to all defendants who are without financial resources or who are otherwise unable to employ counsel.").

Rhode Island

- The court automatically appoints counsel upon a finding of indigency. R.I. R. DIST. CT. R. CRIM. P. 44 ("If the offense charged is punishable by imprisonment for a term of more than six months or by a fine in excess of $500, the court shall advise the defendant of his or her right to assignment of counsel and shall assign counsel to represent the defendant at every stage of the proceeding unless the defendant is able to obtain his or her own counsel or elects to proceed without counsel.").

South Carolina

- The court automatically appoints counsel upon a finding of indigency. S.C. APP. CT. R. 602 ("The officer before whom the arrested person is taken shall . . . [a]dvise the accused of his right to counsel and of his right to the appointment of counsel by the court, if the accused is financially unable to employ counsel. If the accused represents that he is financially unable to employ counsel, take his application for the appointment of counsel or for the services of the Public Defender where the latter is available in the county. . . . If application for counsel is approved for the accused,

the Clerk of Court or other officer shall immediately notify the Office of Public Defender, if one exists in the county, and the Public Defender shall immediately thereafter enter upon the representation of the accused. If there is no Public Defender for the county, then the Clerk of Court or other officer shall immediately notify the court, or such person as the resident judge may designate, of the request for counsel and appointment of counsel shall be made immediately with prompt notification thereof to the accused and counsel so appointed.").

South Dakota

- The court must advise the defendant of the right to counsel. S.D. CODIFIED LAWS § 23A-4-3 ("The committing magistrate shall inform the defendant . . . of the defendant's right to retain counsel and to request assignment of counsel if the defendant is unable to obtain counsel . . . .").
- The court appoints counsel upon the defendant's request. S.D. CODIFIED LAWS § 23A-40-6 ("if it is satisfactorily shown that the defendant or detained person does not have sufficient money, credit, or property to employ counsel and pay for the necessary expenses of his representation, the judge of the circuit court or the magistrate shall, upon the request of the defendant, assign, at any time following arrest or commencement of detention without formal charges, counsel for his representation . . . ."); *but see State ex rel. Warner v. Jameson*, 91 N.W.2d 743, 745 (S.D. 1958) ("When an accused appears for arraignment he is required to demand or waive counsel immediately. . . . Therefore *before an accused is asked* whether or not he desires the aid of counsel he should first be

fully informed of his rights in this regard.") (emphasis added).

Tennessee

- The court automatically appoints counsel upon a finding of indigency. TENN. CODE ANN. § 40-14-202(a) ("In all felony cases, if the accused is not represented by counsel and the court determines by the manner provided in subsection (b) that the accused is an indigent person who has not competently waived the right to counsel, the court shall appoint to represent the accused either the public defender, if there is one for the county, or, in the absence of a public defender, a competent attorney licensed in this state.").

Texas

- The court must advise the defendant of the right to counsel. TEX. CODE. CRIM. P. ANN. art. 15.17 ("The magistrate shall inform in clear language the person arrested . . . of his right to retain counsel . . . [and] of the person's right to request the appointment of counsel if the person cannot afford counsel.").

- The court appoints counsel upon the defendant's request. TEX. CODE. CRIM. P. ANN. art. 1.051(c) ("Except as otherwise provided by this subsection, if an indigent defendant is entitled to and requests appointed counsel and if adversarial judicial proceedings have been initiated against the defendant, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county shall appoint counsel as soon as possible . . . .").

Utah

- The court must advise the defendant of the right to counsel. UTAH R. CRIM. P. 7(e)(3) ("The magistrate having jurisdiction over the offense charged shall, upon the defendant's first appearance, inform the defendant . . . of the right to retain counsel or have counsel appointed by the court without expense if unable to obtain counsel . . . .").
- The court appoints counsel upon the defendant's request or upon the court's own motion. UTAH CODE ANN. § 77-32-302 (1)(a) ("Legal counsel shall be assigned to represent each indigent and the indigent shall also be provided access to defense resources necessary for an effective defense, if the indigent is under arrest for or charged with a crime in which there is a substantial probability that the penalty to be imposed is confinement in either jail or prison if: (a) the indigent requests counsel or defense resources, or both . . . ."); UTAH CODE ANN. § 77-32-302(b) ("Legal counsel shall be assigned to represent each indigent . . . if . . . (b) the court on its own motion or otherwise orders counsel, defense resources, or both and the defendant does not affirmatively waive or reject on the record the opportunity to be represented and provided defense resources.").

Vermont

- The court automatically appoints counsel upon a finding of indigency. VT. STAT. ANN. tit. 13, § 5234(a)(2) ("If the person detained or charged does not have an attorney and does not knowingly, voluntarily and intelligently waive his right to have an attorney when detained or charged, notify the appropriate public defender that he is not so

represented. This shall be done upon commencement of detention, formal charge, or post-conviction proceeding, as the case may be."); VT. STAT. ANN. tit. 13, § 5235 ("If a law enforcement officer, magistrate, or court determines that a person is entitled to be represented by an attorney at public expense, the officer, magistrate, or court, as the case may be, shall promptly notify the appropriate public defender.").

Virginia

- The court or its agents must inquire about a defendant's financial status. VA. CODE ANN. § 19.2-159(C) ("The court shall also require the accused to complete a written financial statement to support the claim of indigency and to permit the court to determine whether or not the accused is indigent within the contemplation of law. The accused shall execute the said statements under oath, and the said court shall appoint competent counsel to represent the accused.").

- The court automatically appoints counsel upon a finding of indigency. VA. CODE ANN. § 19.2-159(A) ("If the accused shall claim that he is indigent, and the charge against him is a [qualifying] criminal offense . . . the court shall determine . . . whether or not the accused is indigent within the contemplation of law pursuant to the guidelines set forth in this section . . . . If the accused does not waive his right to counsel or retain counsel on his own behalf, counsel shall be appointed for the accused if" he is financially eligible.).

Washington

- The court automatically appoints counsel upon a finding of indigency. WASH. SUP. CT. CRIM. R.

3.1(d)(1) ("Unless waived, a lawyer shall be provided to any person who is financially unable to obtain one without causing substantial hardship to the person or to the person's family."); WASH. SUP. CT. CRIM. R. 4.1(c) ("If the defendant appears without counsel, the court shall inform the defendant of his or her right to have counsel before being arraigned. The court shall inquire if the defendant has counsel. If the defendant is not represented and is unable to obtain counsel, counsel shall be assigned by the court, unless otherwise provided.").

West Virginia

- The court must advise the defendant of the right to counsel. W. VA. CODE § 62-1-6 ("The justice shall in plain terms inform the defendant of the nature of the complaint against him, of his right to counsel . . . .").
- The court appoints counsel upon the defendant's request. W. VA. CODE § 50-4-3 ("In the event a defendant requests that counsel be appointed and executes an affidavit that he is unable to afford counsel, the magistrate shall stay further proceedings and shall request the judge of the circuit court, or the chief judge thereof . . . shall thereupon appoint counsel.").

Wisconsin

- The court must advise the defendant of the right to counsel. WIS. STAT. ANN. § 970.02(6) ("In all cases in which the defendant is entitled to legal representation under the constitution or laws of the United States or this state, the judge or magistrate shall inform the defendant of his or her right to counsel and, if the defendant claims or appears to

be indigent, shall refer the person to the authority for indigency determinations specified under s. 977.07(1).").

- The court appoints counsel upon the defendant's request. WIS. STAT. ANN. § 967.06(2)(a) ("[A] person entitled to counsel . . . who indicates at any time that he or she wants to be represented by a lawyer, and who claims that he or she is not able to pay in full for a lawyer's services, shall immediately be permitted to contact the authority for indigency determinations . . . .").

Wyoming

- The court must advise the defendant of the right to counsel. WYO. STAT. ANN. § 7-6-105(b) ("At the person's initial appearance the court shall advise any defendant who is a needy person of his right to be represented by an attorney at public expense.").
- The court appoints counsel upon the defendant's request. WYO. STAT. ANN. § 7-6-105(b) ("If the person charged does not have an attorney and wishes one, the court shall notify an available public defender for the judicial district or shall appoint an attorney to represent the needy person if no public defender is available."); WYO. R. CRIM. P. 44(b)(1) ("An attorney should be appointed at the earliest time after a defendant makes a request, but only after appropriate inquiry into the defendant's financial circumstances and a determination of eligibility.").